

BEFORE THE

**Federal Communications Commission**

WASHINGTON, D.C. 20554

OCT 12 1999

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Review of the Commission's Regulations	)	MM Docket No. 91-221
Governing Television Broadcasting	)	
	)	
Television Satellite Stations Review of	)	MM Docket No. 87-8
Policy and Rules	)	

To: The Commission

**REPLY COMMENTS OF CBS CORPORATION  
ON "TIE-BREAKER" PROPOSAL**

CBS Corporation ("CBS") hereby replies to the comments filed pursuant to the FCC's Public Notice, FCC 99-240 (released September 9, 1999), in which the Commission proposed to use lotteries to determine the processing order of applications filed pursuant to the Commission's new local broadcast ownership rules. By and large, all of the comments submitted are consistent with the first-to-contract method proposed by CBS in its Comments.

**I. Several Common Threads Run Through the Comments.**

Comments were filed by four other broadcasters in addition to CBS — Viacom, Inc. ("Viacom"), Tribune Broadcasting Company ("Tribune"), Sinclair Broadcast Group, Inc. ("Sinclair") and Paxson Communications Corporation ("Paxson") (collectively the "Broadcasters") — by two broadcast trade associations, the National Association of Broadcasters

(“NAB”) and the Association of Local Television Stations, Inc. (“ALTS”), and by two public interest groups, the Minority Media Telecommunications Council (“MMTC”) and the Office of Communications of the United Church of Christ et al. (“UCC”).

Several common threads appear to run through the comments. First, several commenters point out that there are substantial questions about the Commission’s legal authority to use lotteries to resolve conflicts between applications for consent to the assignment or transfer of control of broadcast licenses. *See, e.g.*, UCC Comments at 2-4, Sinclair Comments at 5-8, Paxson Comments at 4-5. As a suggested alternative, both of the public interest groups propose that the Commission resolve conflicts by using methodologies that take into account “public interest” considerations. MMTC suggests that the Commission give a “bump-up” to applicants that propose to spin off a full power television station to socially and economically disadvantaged small business concerns. UCC suggests that the Commission use a “point system,” under which credits or demerits would be given to applicants based, among other things, on their programming proposals.

Second, several commenters point out that the proposed rules do not take into account all the circumstances under which conflicts could arise. *See, e.g.*, CBS Comments at 2-4; Viacom Comments at 2. In particular, a number of commenters urge the Commission to take into consideration, or express concern about whether the Commission will take into consideration, LMAs and other pre-existing attributable interests or relationships in determining whether a conflict exists. *See, e.g.*, CBS Comments at 4-6; Viacom Comments at 2; ALTS Comments at 2.

Third, several commenters urge the Commission to give priority to pre-existing relationships, generally LMAs, but also to other interests that would be attributable under the

new local broadcast multiple ownership rules. *See, e.g.* Tribune Comments at 2, 4-5; Paxson Comments at 5-6; Sinclair Comments at 3-4; NAB Comments at 2-3.

## II. **The “First-to-Contract” Method Is a Fair and Easy-to-Administer Method of Addressing These Concerns.**

In CBS’s view, the concerns raised above are addressed by the first-to-contract method proposed by CBS and Viacom. *See* Comments at 7-12; Viacom Comments at 2. By using the first-to-contract method to determine the processing order of potentially conflicting transactions, the Commission would as a practical matter eliminate the need to resort to tie-breaker lotteries and would thus eliminate the possibility of litigation over the Commission’s authority to use lotteries. The first-to-contract method, as proposed by CBS and Viacom, would also take into account all of the circumstances under which conflicts might arise — applications to acquire stations, LMAs and non-controlling attributable interests. The first-to-contract method would also give *de facto* priority to pre-existing relationships, *i.e.*, LMAs, non-controlling attributable interests, and purchase or merger agreements. Finally, the first-to-contract method serves the public interest by preserving the reasonable contractual expectations of the parties to agreements and avoiding undue disruption to the financial markets.

It is nevertheless theoretically possible that a “tie” may occur under the “first-to-contract” method. To resolve such ties, the Commission could use the “bump-up” proposed by MMTC. Thus, a priority would be given to any party that proposes to “spinoff” (as defined by MMTC) a broadcast station to a socially and economically disadvantaged small business concern. CBS has no objection to the use of the “bump-up,” but CBS suggests that the Commission also give credit to spin-offs of radio as well as full-power television stations, particularly in light of the fact that

conflicts may arise under the local ownership rules between applicants to acquire radio stations as well as between applicants to acquire television stations.

In addition, if a “tie” still exists after application of the “bump-up,” the Commission should give the parties to the “tie” a 30 to 60-day period to resolve the tie by mutual agreement as suggested by Tribune. *See* Tribune Comments at 7. Any resulting settlement must of course be consistent with the Commission’s multiple ownership rules.

By employing the methodologies outlined above, the Commission should seldom if ever be confronted with the unviable task of having to resolve a “tie.” Because “ties” are so unlikely to occur, CBS recommends that the Commission defer until such time as a “tie” occurs any decision on how the tie would be resolved — whether by lottery, auction or comparative hearing.

### III. **Conclusion**

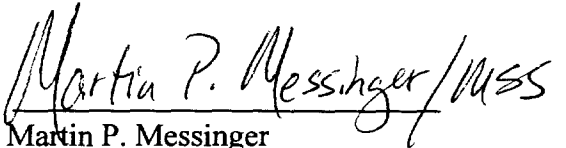
It is clear that the first-to-contract method is the fairest, easiest-to-administer and most rational way of determining the processing order of proposals that would otherwise be in conflict under the FCC’s new local broadcast multiple ownership rules. The first-to-contract method eliminates or minimizes use of a legally suspect methodology such as a lottery. More importantly, the first-to-contract method addresses the concern raised by the Broadcasters that the Commission not adopt a methodology that disrupts parties’ reasonable contractual expectations.

CBS also endorses the Commission’s use of the “bump-up” proposed by MMTC in the event that parties are “tied” under the first-to-contract method. Furthermore, the Commission

should give parties to a "tie" the opportunity to negotiate a private resolution of the tie before applying any other tie-breaker mechanism.

Respectfully submitted,

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